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ATTORNEY GENERAL

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MAR 09 2020

March 3, 2020

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: James R. Smith v. State of South Carolina
Appellate Case No. 2020-000322
Lower Court Case No. 2018-CP-32-03662

Dear Mr. Shearouse:

Please accept this letter in response to the Court's letter dated February 26, 2020, seeking explanation as to "why this Court should not vacate the order on appeal and remand to the circuit court to consider the response to the conditional order of dismissal and motion to amend." If a more formal reply is needed, please let me know and I will be happy to provide one.

As a brief background, this current post-conviction action is Mr. Smith's second post-conviction relief action. On February 2, 2010, Mr. Smith, alongside counsel, appeared before the Honorable R. Lawton McIntosh, circuit court judge, for an evidentiary hearing. At that time, Mr. Smith elected to withdraw his application and following a sworn colloquy with the court, he made a knowing, intelligent, and voluntary waiver of his post-conviction relief action. An order to that effect was signed on April 23, 2010.


Mr. Smith initiated this successive post-conviction relief action on October 26, 2018. In response, the State moved to summarily dismiss the action for failing to state a claim upon which post-conviction relief could be granted and as barred by the statute of limitations as set forth in the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. The Honorable Alison R. Lee, acting in her capacity as Chief Administrative Judge, issued a conditional order of dismissal provisionally dismissing the action but allowing Mr. Smith twenty days from the date of service to provide sufficient reasons why the action should not be summarily dismissed. Attached to the conditional order is a certificate of service from the Lexington County Clerk of Court indicating the order was served on Mr. Smith on December 10, 2019. On January 7, 2020—approximately a week after the twenty-day deadline passed—the State had not received any reply to the motion to dismiss or the Conditional Order of Dismissal nor had such a response been filed according to the public index, and accordingly, I drafted and submitted a proposed Final Order of Dismissal to The Honorable Walton J. McLeod, IV, Chief Administrative Judge,

indicating Mr. Smith failed to respond and dismissing the action in its entirety. Thereafter, and crucially, **after** the State's proposed order had been submitted to the court, Mr. Smith filed his reply to the Conditional Order of Dismissal and his motion to amend on January 8, 2020; this was received by our office on January 13, 2020. The Final Order of Dismissal was signed by Judge McLeod on January 13, 2020, and filed on January 14, 2020. Accordingly, when the proposed order was submitted for the Court's review, Mr. Smith had not made a response to the Conditional Order of Dismissal and the proposed Final Order of Dismissal was accurate and appropriately submitted.

The State takes no position as to whether this Court should remand the matter back to the circuit court for action on his reply and motion, but would note that because Mr. Smith did not respond within the twenty-day window prescribed by the circuit court as set forth in the Conditional Order and did not request an extension, Mr. Smith relinquished his opportunity to challenge the dismissal of his post-conviction relief action based on the terms as set forth in the court's Conditional Order of Dismissal.

Please let me know if I can provide any additional information for the Court or if the Court would like a more formal reply.

Sincerely,



Lillian L. Meadows
Assistant Attorney General
S.C. Bar Number 103665

cc: James R. Smith, SCDC # 197390

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